IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

WP(C).No. 4645 of 2007(C)

PETITIONERS:

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1. MERLIN @ SHERLY AUGUSTIN,
   AGED 37 YEARS, W/O.LATE AUGUSTIN @ OUSTIAN
   VAVACHAN, THAIKOOTTATHIL, FORT KOCHI, NOW
   RESIDING AT KOIPARAMBIL VEETTIL,
   HOUSE NO.18/1556, M.L.A.ROAD, PALLURUTHY,
   KOCHI-682 006.

2. CHRISTOPHER NEETHIN, AGED 6 YEARS,
   S/O.LATE AUGUSTIN @ OUSTIAN VAVACHAN,
   BEING MINOR REPRESENTED BY HIS MOTHER,
   MERLIN @ SHERLY AUGUSTIN.

BY ADV. SRI.TOM JOSE

RESPONDENTS:

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1. YESUDAS, S/O.LATE VAVACHAN,
   THAIKOOTTATHIL VEEDU, RESIDING AT
   C.C.NO.1/1185, NJALIPARAMBIL,
   FORT KOCHI, KOCHI-682 001.

2. TELMA YESUDAS, W/O.YESUDAS,
   THAIKOOTTATHIL VEEDU, RESIDING AT
   C.C.NO.1/1185, NJALIPARAMBIL, FORT KOCHI,
   KOCHI-682 001.

3. LILLY JAMES, AGED 43 YEARS,
   W/O.JAMES, KURIZHINKAL VEETTIL,
   THANNIPALLY, KUDUANGASSERRY,
   NAYARAMBALAM.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.4645 OF 2007-C

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Dated this the 13th day of February, 2007.

JUDGMENT

Can a Lok Adalat make an award touching the rights of a minor? This is the short issue for decision in this case.

2. Heard the learned counsel for the petitioners. Having regard to the issue in hand and the nature of the judgment being passed, notices to respondents are dispensed with.

3. Vavachan and Karmely had three children, late Augustin, the first respondent Yesudas and the third respondent Lilly James. The first petitioner is widow of late Augustin and the second petitioner, a minor aged 6 years, is their child. The second respondent is the wife of the first respondent.

4. Disputes arose during the lifetime of Karmely regarding an item of property. The petitioners, as heirs of Augustin, claiming share in it, filed Ext. P4, pre-litigation petition, essentially invoking Section 19(5)(ii) of the Legal Services Authorities Act, 1987, for short, hereinafter, the "Act".

5. By the time the matter reached the Legal Services Committee for consideration, Karmely died bereft of the fortune of enjoying the bliss of the amicable settlement of the disputes between her dear ones. It is stated that the parties arrived at a consensus to let respondents 1 and 2 have the building, provided the third respondent Lilly James is paid an amount of Rs.85,000/- and the petitioners, being the heirs of late Augustin, are paid an amount of Rs.85,000/-. The parties made oral submissions before the Legal Services Committee regarding such understanding between the parties.

6. The Legal Services Committee, however, came to

the conclusion that because the second petitioner is a minor, it may not be appropriate for the Legal Services Committee to finalise the matter and accordingly relegated the petitioners to move appropriate petition before the Court of Wards. This writ petition is filed being aggrieved by such procedure.

7. Article 39A of the Constitution provides that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The provision for legal aid under Article 39A may, at times, become glossed by the fundamental right to life under Article 21 and it could be treated as part of the right created under Article 21 in suitable cases. The Committee for Implementing Legal Aid Schemes (CILAS) was appointed to monitor and implement legal aid programmes

on a uniform basis. Lok Adalats were being constituted at various places in the country for settlement of disputes between the parties expeditiously and with lesser costs. In view of the fact that the institutions of Lok Adalats, with the passage of time, become very popular, it became necessary to provide statutory backing to those institutions and awards given by the Lok Adalats. It was felt that such a statutory support would not only reduce the burden of arrears of work in regular courts, but would also take justice to the door-steps of the poor and the needy and make justice quicker and less expensive. This led to the Act.

8. Under Section 19(5)(ii) of the Act, a Lok Adalat shall have the jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of any matter which is not brought before any court for which the Lok Adalat is organised, but is falling within the jurisdiction thereof. Section 20(2) provides that on receipt of an application from any one of the parties to

any matter referred to in clause (ii) of sub-section (5) of Section 19, by the Authority or Committee organising the Lok Adalat, the same can be referred to the Lok Adalat, for determination. This is notwithstanding anything contained in any other law for the time being in force. When such a reference is made, the Lok Adalat, in terms of Section 20 (3), shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties. This shall result in an award and such award shall be deemed to be a decree of a civil court in terms of Section 21 of the Act. By sub-section (2) of Section 22, every Lok Adalat has the requisite power to specify its own procedure for the determination of any dispute coming before it.

9. By virtue of Section 19(2) of the Act, when a Lok Adalat is organised for any court, any matter falling within the jurisdiction of that court, but is not brought before it, can be determined by such Lok Adalat, to arrive at a compromise or settlement between the parties to such a dispute. The only exception to that situation is that

embodied in the proviso occurring after sub-section (5) of Section 19 which provides that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law. Therefore, except in cases where it is a case or a matter relating to an offence not compoundable under any law, a Lok Adalat shall have the jurisdiction to determine and to arrive at a compromise or settlement in respect of such matters which fall within its jurisdiction. Different types of litigations can be entertained by the civil courts. All such matters are, therefore, amenable to the jurisdiction of the Lok Adalat also, without any restriction being imposed. This principle is further fortified by the non obstante clause in sub-section (2) of Section 20 which enjoins the Authority or Committee organising the Lok Adalat to refer the matter to the Lok Adalat for determination.

10. Ext.P4 was an application filed by the petitioners seeking partition, maintenance and for right to take the immovables belonging to them. Such reliefs are those

which could have been granted by the Sub Court, if it were trying a suit for such reliefs. Even if a minor is a party to that suit, such Court could have granted a decree binding the minor in accordance with law. It also includes the authority of the Court to dispose of the case on the basis of compromise, subject to the provisions in Order 32 Rule 7 of the Code of Civil Procedure which enjoins that a compromise on behalf of the minor ought to be entered into only with the leave of the Court, expressly recorded in the proceedings. The provisions in Order 23 Rule 3 of the Code of Civil Procedure relating to compromise of suits are not at variance with the power of the Lok Adalat to record a settlement between the parties. In the matter of entering into an agreement or compromise on behalf of a minor, Order 23 Rule 3 and Order 32 Rule 7 work in unison. While the strict rules of procedure provided in Order 32 Rule 7 relating to prior sanction by the Court to record a compromise on behalf of the minor would govern the parties before the civil court, such provision is not mutatis mutandis applicable to Lok Adalats. So much so, when

parties to a case pending before the Lok Adalat arrive at a settlement between them in the nature of a compromise, the provisions contained in Order 23 Rule 3 and Order 32 Rule 7 could be the reasonable guideline, since Section 20 (4) requires every Lok Adalat, while determining any reference before it to arrive at a compromise or settlement between the parties, to be guided by the principles of justice, equity, fair play and other legal principles. This includes good conscience. By virtue of Section 21, the award of the Lok Adalat shall be deemed to be a decree of a civil court and shall be final and binding to all the parties to the dispute. So much so, the rigor of Order 32 Rule 7 need not, by itself, deter a Lok Adalat from arriving at a compromise in a matter in which the interest of a minor is involved. In the circumstances of the situation in which a minor is placed, it will be appropriate for the Adalat to ensure that a compromise is entered and recorded on behalf of a minor with the leave of the Adalat which could be granted on a proper application in that regard, again having in mind the duty of the Lok Adalat to be guided by

principles of justice, equity, fair play and other legal principles. So much so, if the next friend or guardian of a minor applies to the Lok Adalat for leave to enter into any agreement or compromise on behalf of the minor with reference to the subject matter of the reference before the Lok Adalat, it would be well within the jurisdiction and authority of the Lok Adalat to grant such leave on being satisfied that the agreement or compromise is for the benefit of the minor. In granting such leave, it would be open to the Adalat to take stock of the entire fact situation and also insist on an affidavit being filed by the guardian to the effect that the agreement or compromise proposed, is for the benefit of the minor. Hence, in a matter where a minor is involved, a compromise or settlement between the parties could well be accepted and acted upon by the Lok Adalat, if it is satisfied on such materials as may be produced or called for by it, that the settlement is in the interest of the minor also and that such settlement does not, in any manner, impair the interest of the minor and has not been made to defeat any interest of the minor. It can also

be ensured that the person acting on behalf of the minor to arrive at the settlement, does not have any interest contrary to that of the minor in the case in question. If such yardsticks are applied and a settlement or a compromise involving a minor is recorded and let to fructify into an award in terms of the Act, such deemed decree is sufficient enough to take care of the interest of the minor and also to bind the minor, in which event, recourse to provisions and procedures before the Court of Wards would be unnecessary. If the Lok Adalat treats the cases in which the interests of minors are involved, in the light of what is stated above and the parties place such materials as are required for the Lok Adalat to be satisfied that the settlement is in the interest of the minor concerned, it will be well within its jurisdiction and bounds to pass an award accepting the settlement. In such cases, the Lok Adalats would be acting in the interest of the minor, by securing its legitimate rights.

In the light of what is stated above, all that hinders the

settlement of the disputes between the heirs of Vavachan and Karmely is the mere fact that the second petitioner, who is one of their grandsons, is a minor, as of now. Hence, the decision contained in Ext.P5 in so far as it is made on 26-8-2006 and the consequent closure of the impugned proceedings are quashed. Following this judgment, the Legal Services Committee will take up Ext.P4 and further proceed with the matter in the light of what is stated above. The writ petition is allowed accordingly.

Sd/-
THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

-true copy-

P.S.to Judge.